

CLAUSE H-33 – PRICE REDETERMINATION - PROSPECTIVE (August 2002)

- (a) General. The unit prices and the total price stated in this subcontract shall be periodically redetermined in accordance with this clause, except that –
 - (1) The prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) shall remain fixed and
 - (2) In no event shall the total amount paid under this subcontract exceed any ceiling price included in the subcontract.
- (b) Definition. "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this subcontract.
- (c) Price Redetermination Periods. For the purpose of price redetermination, performance of this subcontract is divided into successive periods. The first period shall extend from the date of the contract to ____, [see Note (1)] and the second and each succeeding period shall extend for ____ [insert appropriate number] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.
- (d) Data Submission.
 - (1) Not more than ____ nor less than ____ [see Note (2)] days before the end of each redetermination period, except the last, the Subcontractor shall submit –
 - (i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and –
 - (A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet (or in any other form on which the parties may agree);
 - (B) Sufficient data to support the accuracy and reliability of this estimate; and
 - (C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and
 - (ii) A statement of all costs incurred in performing this subcontract through the end of the ____ month [see Note (3)] before the submission of proposed prices, on Standard Form 1411, Contract Pricing Proposal Cover Sheet (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for –
 - (A) Supplies delivered and services performed; and
 - (B) Inventories of work in process and undelivered subcontract supplies on hand (estimated to the extent necessary).
 - (2) The Subcontractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded –
 - (i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) above for –
 - (A) Supplies delivered and services performed; and
 - (B) Inventories of work in process and undelivered subcontract supplies on hand (estimated to the extent necessary); and
 - (ii) Any other relevant data that the Subcontracting Officer may reasonably require.
 - (3) If the Subcontractor fails to submit the data required by subparagraphs (1) and (2) above, within the time specified, the Subcontracting Officer may suspend payments under this subcontract until the data are furnished. If it is later determined that SURA has overpaid the Subcontractor, the Subcontractor shall repay the excess to SURA immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.
- (e) Price Redetermination. Upon the Subcontracting Officer's receipt of the data required by paragraph (d) above, the Subcontracting Officer and the Subcontractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.
- (f) Subcontract Modifications. Each negotiated redetermination of prices shall be evidenced by a modification to this subcontract, signed by the Subcontractor and the Subcontracting Officer, stating the redetermined prices that apply during the redetermination period.

- (g) Adjusting Billing Prices. Pending execution of the subcontract modification (see paragraph (f) above), the Subcontractor shall submit invoices or vouchers in accordance with the billing prices stated in this subcontract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Subcontractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a subcontract modification and shall not affect the redetermination of prices under this clause. After the subcontract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.
- (h) Quarterly Limitation on Payments Statement. This paragraph (h) applies only during periods for which firm prices have not been established.
- (1) Within 45 days after the end of the quarter of the Subcontractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by SURA under this subcontract, and for each quarter thereafter, the Subcontractor shall submit to the subcontract administration office (with a copy to the Subcontracting Officer and the cognizant subcontract auditor) a statement, cumulative from the beginning of the subcontract, showing –
 - (i) The total subcontract price of all supplies delivered (or services performed) and accepted by SURA and for which final prices have been established;
 - (ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by SURA and for which final prices have not been established;
 - (iii) The portion of the total interim profit (used in establishing the initial subcontract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies delivered (or services performed) and accepted by SURA and for which final prices have not been established; and
 - (iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by SURA (including amounts applied or to be applied to liquidate progress payments).
 - (2) The statement required by subparagraph (1) above need not be submitted for any quarter for which either no costs are to be reported under subdivision (1)(ii) above, or revised billing prices have been established in accordance with paragraph (g) above, and do not exceed the existing subcontract price, the Subcontractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.
 - (3) Notwithstanding any provision of this subcontract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Subcontractor, as computed in accordance with subdivisions (1)(i),(ii), and (iii) above, the Subcontractor shall immediately refund or credit to SURA the amount of this excess. The Subcontractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Subcontractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits affected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Subcontractor shall provide complete details to support any claimed reductions in refunds.
 - (4) If the Subcontractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that SURA has overpaid the Subcontractor, the Subcontractor shall repay the excess to SURA immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.
- (i) Lower-Tier Subcontracts. No lower-tier subcontracts placed under this subcontract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Subcontractor shall –
- (1) Insert in each price redetermination or incentive price revision lower-tier subcontract the substance of paragraph (h) above, and of this paragraph (i), modified to omit mention of SURA and to reflect the position of the Subcontractor as purchaser and of the lower-tier subcontractor as vendor, and to omit that part of subparagraph (h)(3) above relating to tax credits; and
 - (2) Include in each cost-reimbursement lower-tier subcontract a requirement that each lower-tier price redetermination or incentive price revision lower-tier subcontract contain the substance of paragraph (h) above, and this paragraph (i), modified as required by subparagraph (1) above.

- (j) Disagreements. If the Subcontractor and the Subcontracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) above are to be submitted, the Subcontracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) above, and pending final settlement of the disagreement on appeal, by failure to appear, or by agreement, this decision shall be treated as an executed subcontract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.
- (k) Termination. If this subcontract is terminated, prices shall continue to be established in accordance with this clause for –
- (1) Completed supplies and services accepted by SURA and;
 - (2) Those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this subcontract.